80-1762

Office-Supreme Court, U.S.
FILED
APR 21 1981
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1980

No.

RONALD F. MANALE, *Petitioner,*

— *vs.* —

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CARL F. GUY, ESQ.
850 Fay Road
Syracuse, New York 13219
(315) 488-2933
Counsel for Petitioner

FRANK ARMANI, ESQ.
4300 West Genesee Street
Syracuse, New York 13219
(315) 487-2551
Counsel of Record

QUESTIONS PRESENTED FOR REVIEW

1. Whether the evidence of guilt was insufficient to warrant submitting this case to the jury as there was no evidence of any agreement to violate Federal Law.

2. Whether Joinder of Petitioner and other co-defendants for trial resulted in Petitioner's being denied his right to a Speedy Trial and hence, a fair trial.

3. Whether the sanctions of the Speedy Trial Act were in effect on July 23, 1979, thus mandating the dismissal of the indictment.

4. Whether Petitioner was denied his Constitutional right to a Speedy Trial.

PARTIES IN PROCEEDING BELOW

Patrick Malek
Sherry B. Bailey
James R. Blua
Thomas E. Hennekens
James J. Distefano
John D. Clark

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties in Proceeding Below	i
Table of Authorities	iii
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of Case	2
POINT I — The evidence of guilt was insufficient to warrant submitting the matter to the Jury as there was no evidence of any agreement to violate Federal Law	5
POINT II — The joinder of Petitioner and other co-defendants for trial resulted in Petitioner's being denied his right to a speedy and hence a fair trial	9
POINT III — The sanctions of the Speedy Trial Act were in effect on July 23, 1979, thus, mandating the dismissal of the indictment	9
POINT IV — Petitioner was denied his Constitutional Right to a Speedy Trial	14
Conclusion	17
Certificate of Service	18

APPENDIX:

A-1.	Decision of the United States Court of Appeals for the Sixth Circuit on Appeal	A1
A-2.	Decision of the United States Court of Appeals for the Sixth Circuit on Motion for Rehearing	A3
B.	Speedy Trial Act of 1974	A4
C.	Speedy Trial Act Amendment of 1979	A26

Page

Table of Authorities Cited:

Cases:

Barker v. *Wingo*, 407 U.S. 514 (1971) 14, 16

Bruton v. *U.S.*, 391 U.S. 123 (1968) 9

Glasser v. *U.S.*, 315 U.S. 60 (1942) 5

Hamling v. *U.S.*, 418 U.S. 87 (1974) 6

In re Winship, 397 U.S. 358 (1970) 5

Jackson v. *Virginia*, 443 U.S. 307 (1979) 6

Pinkerton v. *U.S.*, 328 U.S. 640 (1946) 6

United States v. *Amato*, 495 F. 2d 545 (5th Cir. 1974) ... 5

U.S. v. *Bostic*, 480 F. 2d 965 (6th Cir. 1973) 6, 7

U.S. v. *Falcone*, 311 U.S. 205 (1940) 6, 7

United States v. *Jorgenson*, 451 F.2d 516 (10th Cir. 1971) 5

United States v. *Ostrer*, 460 F. Supp. 388 (S.D.N.Y. 1978) 9

U.S. v. *Thompson*, 533 F. 2d 1006 (6th Cir. 1976) 6

U.S. v. *Williams*, 503 F. 2d 50, 54 (6th Cir. 1974) 7

Statutes:

18 U.S.C.:

§3161 et seq. 2, 4, 10, 12, 14

§3161(c) 10

§3161(h)(8)(a) 10, 13, 14

§3161(h)(8)(c) 14

§3161(g) 10

§3162(a)(2) 10

§3163(b)(c) 10

§3163(c) 10

Page

28 U.S.C. §1254(1) 2

Sec. 841(a)(1) and 846, Title 21, U.S.C. 3, 6

Speedy Trial Act Amendment, 93 Stat. 327 ..... 10, 11

Miscellaneous:

United States Constitution, Amendment VI 2

Rule 8, Federal Rules of Criminal Procedure 9

In The

Supreme Court of the United States

OCTOBER TERM, 1980

No.

RONALD F. MANALE, *Petitioner*,

— *vs.* —

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Ronald F. Manale, hereby petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit in the above-entitled case.

OPINIONS BELOW

The decisions below, both on the original decision and on a motion for rehearing, are unreported. They are appended hereto as Appendix A.

JURISDICTION

The order sought to be reviewed was made and entered on January 19, 1981. An order denying a timely motion for rehearing was made and entered on February 17, 1981. The statutory provision believed to confer on this Court jurisdiction to review the judgement in Question is 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI, United States Constitution: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq. (Set forth in Appendix B).

Speedy Trial Act Amendments Act of 1979. Pub. L 96-43 6, 93 Stat. 327 (1979). (Set forth in Appendix A).

STATEMENT OF CASE

On or about October 17, 1977, Ronald Manale received a telephone call from Christine Wedbush, the Government's principal witness. Ms. Wedbush, who was in Florida at the time, informed Mr. Manale that she was planning to fly to New York later that afternoon and asked Mr. Manale if he could meet her at the airport upon her arrival. Mr. Manale and Ms. Wedbush had been friends for some time and he agreed to meet her at the airport (8/02/79 T.P. 185, A-607).

Ms. Wedbush arrived in New York, as planned, accompanied by another friend of hers, Sherry Bailey (8/02/79 T.p. 188,

A-610). When Mr. Manale met Ms. Wedbush, he was informed by her that she had cocaine and was trying to sell it (8/02/79 T.p. 190, A-612). Mr. Manale was not interested in purchasing any cocaine, but agreed to take Ms. Wedbush and Ms. Bailey to his roommate's apartment (8/02/79 T.p. 192, A-614). At the apartment, Mr. Manale looked at the cocaine but still insisted that he did not want to purchase any (8/02/79 T.p. 582, A-945). At this time, Mr. Manale and his roommate, Albert Sarasohn, agreed to have the cocaine "tested". Mr. Manale and Mr. Sarasohn then left the apartment for a brief period of time (8/02/79 T.p. 194, A-616).

When he returned, Mr. Manale again told Ms. Wedbush that he was not interested in buying the cocaine (8/02/79 T.p. 196, A-618). Ms. Wedbush then asked Mr. Manale to take her and Ms. Bailey back to the airport so that they could continue on their trip to Detroit (8/02/79 T.p. 197-98, A-619-20). Mr. Manale agreed to this, and drove the two women to the airport (8/02/79 T.p. 198, A-620).

When Ms. Wedbush arrived in Detroit the next morning, she took a taxi cab to an address where she was hoping to find a buyer for her cocaine (8/02/79 T.p. 211, A-633). At some time during that trip, Ms. Wedbush fainted. The cab driver returned to the airport in Detroit where Ms. Wedbush was revived by two police officers (8/02/79 T.p. 212, A-634). The officers had, by this time, discovered that she was carrying cocaine, and eventually placed her under arrest (8/02/79 T.p. 255, A-660).

On August 29, 1978, petitioner Manale, along with eight other individuals, was indicted by a Federal Grand Jury for conspiracy to possess with intent to distribute cocaine, in violation of Section 841 (a)(1) and 846, Title 21, United States Code. He was arraigned in the United States District Court, Eastern District of Michigan, Southern Division, on October 16, 1978.

Through November 20, 1978, Mr. Manale requested a number of adjournments which were granted by the District Court. On December 22, 1978, Mr. Manale moved for dismissal of the

indictment 32 days after his arraignment, excluding the delay requested by him and granted by the Court. This was the first time since November 20, 1978, that Mr. Manale took any action which delayed the commencement of the trial. The motion was denied by the District Court on January 31, 1979, and a trial date was set for February 20, 1979, (Exhibit B) (See Gov. brief 4/11/79, A-168). On February 1, 1979, the Government moved for adjournment of the trial until March 27, 1979, (See Gov. brief 2/01/79, A-162). The District Court responded by adjourning the trial until April 9, 1979, (Exhibit C). On March 27, 1979, the District Court set a trial date for April 16, (See Gov. brief 4/11/79, A-168). On April 11, the Government asked for yet still another adjournment until May 22, 1979, (See Gov. brief 4/11/79, A-168). This was also granted by the District Court (Exhibit D). Subsequent to May 22, 1979, none of the parties involved requested adjournments. All parties, including the Government, were prepared and anxious for trial to commence. The District Court, however, was not. The District Court, on its own, adjourned the trial from May 22 to July 5, (Exhibit E), and then from July 5, to July 9.

Other than a request for a short five-day adjournment from July 5 to July 10, 1979, Mr. Manale had not requested any of the other adjournments, nor had he taken any action to delay the proceedings. One hundred fifty-five (155) days had elapsed from January 31, 1979, the date the District Court had denied Mr. Manale's last pre-trial motion to July 5, 1979. Thus, a total of 187 days had elapsed, excluding any period of delay requested by Mr. Manale, from the time of arraignment to commencement of the trial.

On July 9, 1979, Mr. Manale moved for dismissal on the grounds that he had been denied his right to a speedy trial as set forth in 18 U.S.C. 3161 et seq. (7/09/79 T.p. 29, A-319). The District Court denied the motion, basing its decision on the order of June 28, 1979, which was issued by the Court (Exhibit A). The June 28th Order, excluded from Speedy Trial Computations, the period from February 20, 1979, to July 5,

1979, because "the case taken as a whole is so unusual and so complex, due to the number of defendants and the volume of pre-trial motions, that it is unreasonable to expect adequate preparation within the established time periods." (Exhibit A).

On July 23, 1979, the trial finally commenced, but then only part-time, and 283 days since his arraignment.

POINT I

THE EVIDENCE OF GUILT WAS INSUFFICIENT TO WARRANT SUBMITTING THE MATTER TO THE JURY AS THERE WAS NO EVIDENCE OF ANY AGREEMENT TO VIOLATE FEDERAL LAW.

The Constitution prohibits the criminal conviction of any person, except upon proof of guilt beyond reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). On review by an appellate Court, when the defendant contends that the Government has failed to carry the *Winship*-required proof beyond a reasonable doubt burden, the standard to be applied is "whether, taking the view of the evidence most favorable to the government, a reasonably-minded jury could accept the relevant evidence as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt", *United States* v. *Amato*, 495 F. 2d 545 (5th Cir., 1974); or whether "considering the evidence in the light most favorable to the Government, there is substantial evidence from which a jury might reasonably find that an accused is guilty beyond a reasonable doubt" *United States* v. *Jorgenson*, 451, F. 2d 516, 521 (10th Cir., 1971); and *cf Glasser* v. *United States*, 315 U.S. 60 (1942).

Thus, we can see that the test is not whether there is any evidence in the record to support the jury's conclusion, "Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

beyond reasonable doubt" *Jackson* v. *Virginia*, 443 U.S. 307, 320 (1979). In this case, any rational trier of fact could not meet the above test.

The instant indictment alleged that petitioner Manale agreed, with at least eleven other individuals, to participate in a plan to distribute cocaine within the Eastern District of Michigan, Southern Division, contrary to the provisions of Section 841 (a)(1) and 846, Title 21, United States Code.

In *U.S.* v. *Thompson*, 533 F. 2d 1006 (6th Cir., 1976), the Sixth Circuit set forth the essential elements of a conspiracy:

(1) the conspiracy described in the indictment was willfully formed and was existing at or about the time alleged.

(2) the accused willfully became a member of the conspiracy.

(3) one of the conspirators thereafter knowingly committed at least one of the overt acts charged in indictment, at or about the time and placed alleged; and

(4) such overt act was knowingly done in furtherance of some object or purpose of the conspiracy.

To sustain a conviction for conspiracy, there must be substantial evidence that each of the above elements exist with regard to the defendant *Hamling* v. *U.S.*, 418 U.S. 87, 124 (1974). If the evidence produced at the trial does not establish that the defendant willfully and knowingly engaged in an illegal plan, the conviction must be overturned. *U.S.* v. *Falcone*, 311 U.S. 205 (1940).

A conspiracy is a partnership in crime, and in all instances there must be an agreement of some kind willingly entered into by the parties to it. *Pinkerton* v. *U.S.*, 328 U.S. 640 1946). Without evidence of an actual agreement between the parties, there can be no conspiracy. *U.S.* v. *Bostic*, 480 F. 2d 965 (6th Cir. 1973).

In *Bostic, supra* at 968, the Court of Appeals adopted Judge Learned Hand's well-known phrase: if a man is to be held for joining others in a conspiracy, "he must in some sense promote their venture himself, make it his own, have a stake in its outcome." The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders". *U.S.* v. *Falcone*, 109 F. 2d 579, 581 (2nd Cir. 1940), aff'd 371 U.S. 205 (1940). Mere knowledge, approval, or association with members of a conspiracy does not make one a party to the plan. There must, in all cases, "be intentional participation in the transaction with a view to the furtherance of the common design and purpose" *Bostic, supra*, at 968. Even one who acquiesces in the object or the purpose of the conspiracy cannot be held to be a co-conspirator "without an intention and agreement to cooperate in the (plan)", *U.S.* v. *Williams*, 503 F. 2d 50, 54 (6th Cir. 1974).

An agreement is not formed between two people when one person merely informs the other of an existing conspiracy or entices that person to join the illegal plot. An agreement is only formed when there is an understanding between the two people "whereby they become definitely committed to cooperate for the accomplishment of the object (of the crime) by the means embodied in the agreement." *Bostic, supra*, at 968. The gist of the conspiracy remains the agreement, and it is essential to determine what kind of agreement or understanding existed as to each defendant.

In viewing the evidence in the light most favorable to the prosecution, the evidence is still insufficient to prove that Mr. Manale participated in any conspiracy as there is no evidence whatsoever of an agreement between Mr. Manale and Ms. Wedbush, the Government's main witness, to distribute cocaine in the Eastern District of Michigan, nor is there any evidence of knowledge of a conspiracy. Ms. Wedbush testified that she met with Mr. Manale on October 17, 1977, in New York, and

attempted to sell him cocaine. Mr. Manale did not wish to purchase cocaine and wanted nothing to do with Ms. Wedbush's efforts to sell him the substance (8/06/79 T.p. 552, 558, 582, A-915, 921, 945). Ms. Wedbush testified that when Mr. Manale refused to buy the cocaine, she told him that she "was going to call Detroit" (8/06/79 T.p. 559, A-992). Going to Detroit was the main idea, she said. Mr. Manale did not know anything about Ms. Wedbush's plans for Detroit other than knowing she was going to go there (8/06/79 T.p. 595, A-958). He had no knowledge of any deal with Ms. Wedbush, nor did he indicate at any time that he was going to join in any plan or organization for the marketing of the cocaine (8/06/79 T.p. 598, A-961). Mr. Manale was also ignorant of any plans concerning Florida, and Ms. Wedbush testified that Mr. Manale knew nothing about any plans with other defendants in Florida (8/06/79 T.p. 596, A-959). In fact, Ms. Wedbush stated at trial that she felt it was partly her fault that Mr. Manale was involved, (8/06/79 T.p. 582, A-945), and admitted that she had no agreement with him concerning anything with regard to cocaine (8/06/79 T.p. 599, A-962). The next day at trial, Ms. Wedbush testified that there was "no written agreement between her and Mr. Manale" (8/07/79 T.p. 94, A-1069), and failed to elaborate on that point. That was the only evidence presented against Mr. Manale concerning any "agreement" and as such is insufficient to prove that Mr. Manale violated any Federal Law of conspiracy. Not only did the government's chief witness fail to implicate Mr. Manale, but she actually presented evidence as to his innocence. Mr. Manale did not deserve to be convicted because he did not commit the crime he has been alleged to have committed, and no rational trier of fact could have concluded otherwise.

POINT II

THE JOINDER OF PETITIONER AND OTHER CO-DEFENDANTS FOR TRIAL RESULTED IN PETITIONER BEING DENIED HIS RIGHT TO A SPEEDY TRIAL AND HENCE A FAIR TRIAL.

Mr. Manale was joined for trial with eight other co-defendants, over his objections. As a result, instead of being tried in Court for a trial that wouldn't have lasted over a day, Mr. Manale had to suffer a delay of 283 days, from arraignment to trial. Instead of choosing that option though, the District Court decided to jointly try all the defendants which resulted in the Order of June 28, 1979, which excluded almost 150 days from Speedy Trial computation because "the case taken as a whole is so unusual and so complex, due to the number of defendants." (Exhibit A).

There is a judicial preference for joinder of defendants charged with the same crime. (Rule 8, Federal Rules of Criminal Procedure), when this can be achieved without substantial prejudice to the rights of a defendant to a fair trial, *Bruton* v. *U.S.*, 391 U.S. 123 (1968), (Rule 14, Federal Rules of Criminal Procedure). Indeed defendants are said to gain from being tried jointly, because they also benefit, from speedy trial disposition of their own cases. *U.S.* v. *Ostrer*, 460 F. Supp. 388 (S.D. N.Y. 1978). In the instant case, not only did Mr. Manale lose his right to a speedy disposition of his case due to joinder, but because of this he was also denied his right to a fair trial.

POINT III

THE SANCTIONS OF THE SPEEDY TRIAL ACT WERE IN EFFECT ON JULY 23, 1979, THUS, MANDATING THE DISMISSAL OF THE INDICTMENT.

Ronald F. Manale was indicted on August 29, 1978, and he was arraigned for trial on October 16, 1978. Mr. Manale was not brought to trial however, until July 23, 1979; a delay of

283 days. *The Speedy Trial Act*, 18 U.S.C. §3161 et seq. states in part that: "the trial of the defendant shall commence within 60 days from arraignment on the information or indictment . . . 18 U.S.C. §3161(c)." For the period between July 1, 1978, and July 1, 1979, the time during which Mr. Manale was indicted and arraigned, the trial of Mr. Manale should have commenced within 80 days of arraignment 18 U.S.C. §3161(g). "If a defendant is not brought to trial within the time limit required by Section 3161(c) as extended by Section 3161(h), the information or indictment should be dismissed on motion of the defendant." 18 U.S.C. §3162(a)(2). The Speedy Trial Act became effective on July 1, 1976, and sanctions of 3162 became effective on July 1, 1979. 18 U.S.C. §3163(b)(c).

The Speedy Trial Act was enacted on January 3, 1975, to implement provisions of the Sixth Amendment that in all criminal prosecutions, the accused shall enjoy the right to a speedy trial. The report of the House Judiciary Committee stated:

> "The Committee finds that the development of Speedy Trial Legislation is necessary in order to give real meaning to that Sixth Amendment Right. Thus far, neither the decisions of the Supreme Court nor the implementation of Rule 50(b) of the Federal Rules of Criminal Procedure, concerning plans for achieving the prompt disposition of criminal cases, provides the Courts with adequate guidance of this question."

H.R. Rep. No. 93-1508, 93d Cong., 2d sess. reprinted in (1974) U.S. Code Cong. & Ad. News. pp 7401, 7404-05. The Speedy Trial Act was later amended. *The Speedy Trial Act Amendment of 1979*, Pub. L. 96-43 6, 93 stat. 327 (1979) amended Section 3163(c) and made the sanctions effective on July 1, 1980. This amendment was not enacted until August 1979, though Mr. Manale's trial commenced on July 23, 1979. Since this amendment was not the law when Mr. Manale was tried, the sanctions of the original Speedy Trial Act apply. These sanctions require dismissal when the delay between arraignment and trial is over 60 days (3161(c)) or 80 days (3161(g)).

When Congress passed The Speedy Trial Act Amendment on August 2, 1979, Congress did note that:

> "Suspension of the sanction had to be considered in light of potential negative results from such an act, however, the Committee was advised that, after the 4-year phase in period, courts were prepared and able to follow the Congressional mandate of instituting the dismissal sanctions beginning July 1, 1979, and that postponing or suspending the sanction would be a step backward, perhaps creating the impression that full implementation would never be required. Second, many witnesses before the subcommittee and other persons contacted by the Committee in the course of its considerations of the proposed amendments took the view that the dismissal sanction is the very essence of the Speedy Trial requirement, and the requirement without sanction for non-compliance is a hollow requirement . . . Subcommittee witnesses who spoke against suspension of the sanction included . . . *Judge Feikens* of the Eastern District of Michigan . . .

H.R. Rep. No. 390, 96th Cong. 1st sess. 8 reprinted in (1979) U.S. Cong. & Ad. News. p. 812. Congress also urged all districts able to do so to reinstitute the dismissal sanctions." *Id at p. 814.*

The issue then becomes whether any of the delay in commencing the trial is properly excludable from the time computations of the Speedy Trial Act. Mr. Manale was arraigned on October 16, 1978. Through November 20, 1978, Mr. Manale requested a number of adjournments which were granted by the District Court. On December 22, 1978, Mr. Manale moved for dismissal of the indictment 32 days after his arraignment, excluding the delay requested by him and granted by the Court. This was the first time since November 20, 1978, that Mr. Manale took any action which delayed the commencement of the trial. The motion was denied by the District Court on January 31, 1979, and a trial date was set for February 20, 1979, (Exhibit B) (See Gov. Brief 4/11/79, A-168). On February 1, 1979, the Government moved for adjournment of the trial until March 27, 1979, (See Gov. Brief 2/01/79, A-162). The District

Court responded by adjourning the trial until April 9, 1979, (Exhibit C). On March 27, 1979, the District Court set a trial date for April 16 (See Gov. Brief 4/11/79, A-168). On April 11, the Government asked for yet still another adjournment until May 22, 1979, (See Gov. Brief 4/11/79, A-168). This was also granted by the District Court (Exhibit D). Subsequent to May 22, 1979, none of the parties involved requested adjournments. All parties, including the Government, were prepared and anxious for trial to commence. The District Court, though, was not. The District Court, on its own, adjourned the trial from May 22 to July 5, (Exhibit E), and then from July 5, to July 9, ultimately the trial commenced on July 23, 1979, and then only part-time.

Other than a request for a short, five-day adjournment from July 5 to July 10, Mr. Manale did not request any of the other adjournments, nor had he taken any action to delay the proceedings. One hundred fifty-five (155) days elapsed from January 31, 1979, the date the District Court had denied Mr. Manale's last pre-trial motion, to July 5, 1979. Thus, a total of 187 days had elapsed, excluding any period of delay requested by Mr. Manale from the time of arraignment to commencement of the trial. This period of delay is clearly beyond the delay permitted by the Speedy Trial Act, and the Speedy Trial Local Plan.

On July 9, 1979, Mr. Manale moved for dismissal on the grounds that he had been denied his right to a Speedy Trial as set forth in 18 U.S.C. 3161 et seq. (7/09/79, T.p. 29, A-319). The District Court denied the motion, basing its decision on the order of June 28, 1979, which was issued by the Court. (Exhibit A). The June 28th Order, excluded from Speedy Trial computations, the period from February 20, 1979, to July 5, 1979, because "the case taken as a whole is so unusual and so complex, due to the number of defendants and the volume of pre-trial motions, that it is unreasonable to expect adequate preparation within the established time periods." (Exhibit A).

It is apparent that the District Court's order of June 28, 1979, was not made in good faith, nor in the spirit of Congress' intent in enacting the Law. The Order was issued just 3 days before the sanctions of 3162 were to take effect, and the Court was merely attempting to protect itself from having to grant a dismissal. This was the first time in over eight months that the Court had indicated that the case was "so unusual or complex." In its previous orders granting continuances, the Court never stated that it felt unprepared or that the case was particularly difficult. This was certainly not the first case in the Federal Court involving a number of defendants and alleging the existence of a conspiracy. The indictment itself charges only one count and is only five pages long. Clearly, the case at bar is not so unusual or complex as to justify an exclusion of almost 5 months from the Speedy Trial computations. Especially not, when none of the parties, including the Government, asked for a continuance of almost 5 months because of the so-called complexity. Moreover, in this District Court, as in others, there exists a strong preference for notifying the Court at an early date if the trial will be complex. The first indication that the trial was complex was in the Government's motion for adjournment filed on April 11, 1979, (See Gov. Brief 4/11/79, A-168), six months after the arraignment was filed. Six months can hardly be construed as an "early stage of the proceedings". It is also inconceivable that the trial suddenly became "unusual or complex" six months after Mr. Manale was arraigned.

In issuing the June 28th order, the Court also failed to state any facts or reasons for believing the case to be complex, as required under Section 3161(h)(8)(a) of the Speedy Trial Act. The Court merely quoted the language of the statute in drafting its order. Since the Court failed to state these reasons, if any, the delay is not excludable, §3161(h)(8)(a).

Even though the actual reasons for granting the June 28th Order were never disclosed, it is quite obvious that it was the result of other protracted criminal proceedings pending before

the Court. This became clear on July 11, 1979, when the Court expressly stated that another trial was interfering with the Court's ability to proceed in this case (7/11/79, T.p. 40, A-422-23). When Mr. Manale was finally brought to trial on July 23, 1979, it was only part-time because of these other proceedings. Congestion of the Court's calendar is no excuse for delay, and the continuance under §3161(h)(8)(a), as the Court granted, should not have been issued, §3161(h)(8)(c).

The Order of June 28, 1979, should be vacated since it was not issued in good faith. Congress' intent in enacting the Speedy Trial Act was to insure that defendants were afforded a just and expedient trial. It would be a perversion of justice to give a license to the District Courts that would enable them to issue orders at the eleventh hour, preventing defendants from making motions under 18 U.S.C. §3161 et seq. Since the sanctions of the Speedy Trial Act became effective on July 1, 1979, (18 U.S.C. §3163) and Mr. Manale's trial commenced on July 23, 1979, the District Court should have granted Mr. Manale's motion for dismissal on the grounds that he had been denied his right to a speedy trial.

POINT IV

PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

Absent a statutory right to dismissal of the prosecution, Mr. Manale's contentions must be examined to determine whether dismissal is Constitutionally mandated. In *Barker* v. *Wingo*, 407 U.S. 514 (1971), this Court noted that in considering whether a defendant's Sixth Amendment right to a speedy trial has been abridged, the factors that the Courts must scrutinize are: "length of delay, reason for delay, the defendant's assertion of his right and prejudice to the defendant". *Id at 530.*

Mr. Manale was arraigned in Court on October 16, 1978. He was not brought to trial, however, until July 23, 1979. This

was a delay of 283 days. As I have stated previously, the reasons for the long delay are almost solely attributable to either the Government and/or the Court. Mr. Manale is only responsible for a short delay of the proceedings. The actual reasons for the adjournment were either because the Government wasn't prepared and/or other protracted proceedings pending before the Court. These are not justifiable delays and should be weighed against the Government since they have the ultimate responsibility for such circumstances.

The third factor is the defendant's assertion of his right to a speedy trial. Mr. Manale moved several times for dismissal on the grounds that he was being denied his right to a speedy trial (7/08/79 T.p. 26, A-445). This factor showed that he knew the travesty that was being visited upon him.

The fourth factor is the prejudice to Mr. Manale, that he suffered due to the delay. Mr. Manale had moved from New York to Texas a little under a year before he was indicted. It is hard enough as it is to pull up stakes and settle down in a new state. He was trying to establish a new life for himself; find a decent job, settle down and maybe raise a family. As difficult as this was though, he also had to contend with the fact that he was under indictment halfway across the country in Michigan. He had to live with this fact over nine months before he was ultimately brought to trial. He was trying to establish a home for himself in Texas, while travelling back and forth to Michigan. It was no wonder that because of this he had no steady employment or social life of his own. Realistically, he had no life of his own with the threat of prison constantly hanging over his head.

On July 23, 1979, when Mr. Manale's trial finally commenced, his defense had been substantially impaired because of this delay. The Government's case against him consisted chiefly of the testimony of a witness, who had admitted that she had lied to the Grand Jury concerning Mr. Manale (8/03/79 T.p. 473, A-840). A witness who had first testified that Mr. Manale

and her had had no agreement, (8/06/79 T.p. 599, A-962), and then the next day, she testified that there was no written agreement between her and Mr. Manale (8/07/79 T.p. 94, A-1069). A witness that testified that Mr. Manale made reservations for her on a plane to Detroit, (8/02/79 T.p. 198, A-620), and then she's not sure whether he did or not (8/06/79 T.p. 555, A-918). A witness who wasn't sure which airline she flew on, (8/06/79 T.p. 558, A-921), or even which airport she flew out of (8/06/79 T.p. 557, A-920).

The only other witness the Government had against Mr. Manale was Albert Sarasohn. Sarasohn testified that he and Mr. Manale went to have the cocaine tested at a third party's house (8/07/79 T.p. 153, A-1119). This happened in October of 1977. Mr. Manale first discovered that Sarasohn was going to testify to this in July of 1979. By that time, Mr. Manale had already been living in Texas for 22 months, and was now awaiting trial in Michigan. There were no traces at all of this third party, whom, if had been found, would have rebutted Sarasohn's testimony. He had disappeared in the preceding 22 months between the alleged "testing" and the commencement of the trial. The Supreme Court has stated that when a defense witness disappears during the delay, the prejudice is obvious. *Barker* v. *Wingo*, 407 U.S. 514 (1971). Your petitioner was clearly denied his Sixth Amendment right to a Speedy Trial, through no fault of his own, and this denial resulted in undue prejudice to his case.

CONCLUSION

This Court should grant certiorari, and the judgement below should be reversed.

Respectfully Submitted,

CARL F. GUY, ESQ.
Counsel for Petitioner
850 Fay Road
Syracuse, New York 13219

FRANK ARMANI, ESQ.
Counsel of Record
4300 West Genesee Street
Syracuse, New York 13219

I certify that 3 copies of this petition were served upon the following by placing the same in the United States mail on April , 1981, prior to filing in the Clerk's office of this Court.

Solicitor General
Room 5614 Department of Justice
Washington, D.C. 20530

CARL F. GUY, ESQ.
Counsel for Petitioner

FRANK ARMANI, ESQ.
Counsel of Record

APPENDIX

APPENDIX A-1 – Decision of the United States Court of Appeals for the Sixth Circuit on Appeal.

No. 79-5403

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JAN 19 1981
JOHN P. HEHMAN, Clerk

UNITED STATES OF AMERICA,)
Plaintiff-Appellee)
v.) ORDER
RONALD F. MANALE,)
Defendant-Appellant)

Before: LIVELY and MARTIN, Circuit Judges; and MARKEY, Judge.*

This is an appeal from a jury verdict finding appellant Ronald F. Manale guilty of conspiracy to possess with intent to distribute and to distribute cocaine in violation of Title 21 U.S.C. § 841(a)(1) and § 846. The conspiracy arose from the meetings and transactions of Christine Wedbush, chief government witness granted immunity for her testimony, and various individuals in Florida, New York, and Detroit, Michigan. Manale became a participant in the conspiracy as a result of a series of phone calls between him in New York and Wedbush in Florida. He later met Wedbush and Bailey at the New York airport and took them to his apartment where he examined the quality of the cocaine Wedbush was selling.

---

*Honorable Howard T. Markey, Chief Judge, United States Court of Customs & Patent Appeals, sitting by designation.

APPENDIX A-1 — Decision of the United States Court of Appeals for the Sixth Circuit on Appeal.

Manale contends he was denied his right to a speedy trial, that there was insufficient evidence against him, and that he should have been granted a separate trial. We find no merit to his arguments and affirm his conviction.

ENTERED BY ORDER OF THE COURT

s/ JOHN P. HEHMAN
Clerk

A TRUE COPY
Attest:
JOHN P. HEHMAN, Clerk
By s/ (illegible)
Deputy Clerk

ISSUED AS MANDATE: February 25, 1981
COSTS: NONE

APPENDIX A-2 – Decision of the United States Court of Appeals for the Sixth Circuit on Motion for Rehearing.

No. 79-5403

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
FEB 17 1981
JOHN P. HEHMAN, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee	)	
v.	)	ORDER
RONALD F. MANALE, Defendant-Appellant	)	

Before: LIVELY and MARTIN, Circuit Judges; and MARKEY, Judge.*

Upon consideration of the petition for rehearing filed herein by defendant-appellant, the Court concludes that the issues raised therein were fully considered upon the original submission and decision of this case.

IT IS THEREFORE ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

s/ JOHN P. HEHMAN
Clerk

*Honorable Howard T. Markey, Chief Judge, United States Court of Customs & Patent Appeals, sitting by designation.

APPENDIX B – Speedy Trial Act of 1974.

CHAPTER 208–SPEEDY TRIAL

Sec.
3161. Time limits and exclusions.
3162. Sanctions.
3163. Effective dates.
3164. Interim limits.
3165. District plans—generally.
3166. District plans—contents.
3167. Reports to Congress.
3168. Planning process.
3169. Federal Judicial Center.
3170. Speedy trial data.
3171. Planning appropriations.
3172. Definitions.
3173. Sixth amendment rights.
3174. Judicial emergency.

AMENDMENTS

1975—Pub. L. 93-619, title I, §101, Jan. 3, 1975, 88 Stat. 2076, added chapter 208 and items 3161 to 3174.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3155 of this title.

§3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an

individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.

(d) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within sixty days

from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from trials with respect to other charges against the defendant;

(D) delay resulting from interlocutory appeals;

(E) delay resulting from hearings on pretrial motions;

(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3) (A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

(C) No continuance under paragraph (8)(A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty to nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly—

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2076.)

SHORT TITLE

Section 1 of Pub. L. 93-619 provided: "That this Act [enacting this chapter and sections 3153 to 3156 of this title, and amending section 3152 of this title, and section 604 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Speedy Trial Act of 1974'."

ACT REFERRED TO IN OTHER SECTIONS

The Speedy Trial Act of 1974 is referred to in section 3155 of this title.

APPENDIX B — Speedy Trial Act of 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162 to 3166, 3174 of this title; title 15 section 18a.

§3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2079.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3163, 3174 of this title.

§3163. Effective dates

(a) The time limitation in section 3161(b) of this chapter—

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

(b) The time limitation in section 3161(c) of this chapter—

(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

(c) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3161 of this title.

§3164. Interim limits

(a) During an interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under

section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

(1) detained persons who are being held in detention solely because they are awaiting trial, and

(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

(b) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081.)

§3165. District plans—Generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan

when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e)(1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and subsequent twelve-calendar month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081.)

REFERENCES IN TEXT

Effective dates of subsections 3161(b) and 3161(c), referred to in subsecs. (e)(1), (2), are set out in section 3163 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3166, 3167, 3168 of this title.

§3166. District plans—contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications; and

(8) the incidence of, and reasons for each thirty-day extension[1] under section 3161(b) with respect to an indictment in that district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition; and

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements

---

1 So in original. Probably should be "extension".

consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2082.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3170 of this title.

§3167. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The reports shall be submitted within three months following the final dates for the submission of plans under section 3165(e) of this title.

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083.)

§3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if

any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

(b) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of Federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

(c) Members of the planning group with the exception of the reporter shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the advisory group in accordance with the provisions of title 5, United States Code, chapter 57. The reporter shall be compensated in accordance with section 3109 of title 5, United States Code, and notwithstanding other provisions of law he may be employed for any period of time during which his services are needed.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3165 of this title.

§3169. Federal Judicial Center

The Federal Judicial Center shall advise and consult with the planning groups and the district courts in connection with their duties under this chapter.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§3170. Speedy trial data

(a) To facilitate the planning process and the implementation of the time limits and objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics required by sections 3166(b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

(b) The clerk of each district court is authorized to obtain the information required by sections 3166(b) and (c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

(c) The information and statistics compiled by the clerk pursuant to this section shall be made available to the district court, the planning group, the circuit council, and the Administrative Office of the United States Courts.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3166 of this title.

§3171. Planning appropriations

(a) There is authorized to be appropriated for the fiscal year ending June 30, 1975, to the Federal judiciary the sum of $2,500,000 to be allocated by the Administrative Office of the United States Courts to Federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans under this chapter. The funds so appropriated shall remain available until expended.

(b) No funds appropriated under this section may be expended in any district except by two-thirds vote of the planning group. Funds to the extent available may be expended for personnel, facilities, and any other purpose permitted by law.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3168 of this title.

§3172. Definitions

As used in this chapter—

(1) the terms "judge" or "judicial officer" mean, unless otherwise indicated, any United States magistrate, Federal district judge, and

(2) the term "offense" means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§3176. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§3174. Judicial emergency

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits. The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit shall find that no remedy for such congestion is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from arrangement[1]

---

1 So in original. Probably should be "arraignment".

to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent by the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year.

(Added Pub. L. 93-619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

APPENDIX B — Speedy Trial Act of 1974.

CHAPTER 209–EXTRADITION

Sec.

3181. Scope and limitation of chapter.
3182. Fugitives from State or Territory to State, District or Territory.
3183. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of United States.
3184. Fugitives from foreign country to United States.
3185. Fugitives from country under control of United States into the United States.
3186. Secretary of State to surrender fugitive.
3187. Provisional arrest and detention within extraterritorial jurisdiction.
3188. Time of commitment pending extradition.

APPENDIX C – Speedy Trial Act Amendment of 1979.

PUBLIC LAW 96-43 [S. 961]; Aug. 2, 1979

SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979

For Legislative History of Act, see p. 805

An Act to amend the Speedy Trial Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Speedy Trial Act Amendments of 1979".

Speedy Trial Act Amendments of 1979.
18 USC 3161 note.

SEC. 2. Section 3161(c) of title 18, United States Code, is amended to read as follows:

"(c)(1) In any case in which a plea of not guility is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

"(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.".

SEC. 3. (a) Section 3161(d) of that title is amended—

(1) by inserting "(1)" immediately after "(d)"; and

(2) by adding at the end the following new paragraph:

"(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period

for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.".

18 USC 3162.

(b) Section 3161(e) of that title is amended—

(1) by striking out "sixty" wherever it appears and inserting thereof "seventy"; and

(2) by adding at the end the following: "The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.".

SEC. 4. Section 3161(h)(1) of that title is amended to read as follows:

"(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

"(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

"(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

"(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

"(D) delay resulting from trial with respect to other charges against the defendant;

"(E) delay resulting from an interlocutory appeal;

"(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

"(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Pro-
18 USC app. cedure;

"(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

"(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

"(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.".

18 USC 3161. SEC. 5. (a) Section 3161(h)(8)(B)(ii) of that title is amended to read as follows:

"(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.".

(b) Section 3161(h)(8)(B)(iii) of that title is amended to read as follows:

"(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonble to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.".

(c) Section 3161(h)(8)(B) of that title is further amended by adding at the end the following new clause:

"(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.".

18 USC 3163.

SEC. 6. Section 3163(c) of that title is amended to read as follows:

Post, p. 331; 18 USC 3162.

"(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1980.".

18 USC 3164.

SEC. 7. Section 3164 of that title is amended—

(1) by amending the section heading to read as follows:

"§ 3164. Persons detained or designated as being of high risk";

(2) by amending subsection (a) to read as follows:

"(a) The trial or other disposition of cases involving—

"(1) a detained person who is being held in detention solely because he is awaiting trial, and

"(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority."; and

(3) by amending subsection (b) to read as follows:

Trial, effective date.

"(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h)

Ante, p. 327.
18 USC 3165.

are excluded in computing the time limitation specified in this section.".

SEC. 8. Section 3165(e) of that title is amended—

(1) in paragraph (2), by striking out "subsequent" and inserting in lieu thereof "fifth", and

(2) by adding at the end the following:

U.S. district court, submittal of plans.

"(3) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3174(c) shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.".

18 USC 3161.

Time limits.
18 USC 3166.

SEC. 9. (a) Section 3166(b) of that title is amended—

(1) in paragraph (7), by striking out "and" immediately after the semicolon;

(2) in paragraph (8), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.".

(b) Section 3166(c) of that title is amended—

(1) in paragraph (5), by striking out "and" immediately after the semicolon;

(2) in paragraph (6), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

"(B) the number of civil cases pending at the close of such period; and

"(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.".

(c) Section 3166 of that title is further amended by adding at the end the following new subsection:

Guidelines.

"(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.".

18 USC 3168.

(d) Section 3168(a) of that title is amended by striking out "a private attorney experienced in the defense of criminal cases in the district" and inserting in lieu thereof "two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district".

Reports to Congress.
18 USC 3167.

(e) Section 3167 of that title is amended—

(1) in subsection (b), by adding at the end the following: "Such reports shall also include the following:

"(1) The reasons why, in those cases not in compliance with the time limits of subsections (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

18 USC 3161; *ante*, p. 327.

"(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

"(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

"(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

"(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3174 has not been made, the reason why such application has not been made.

Post, p. 331; 18 USC 3174.

"(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.";

(2) by adding at the end the following new subsection:

Report to Congress.

"(c) Not later than December 31, 1979, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

"(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

"(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

"(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

"(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

Civil cases, compliance with time limits. 18 USC 3161; *ante*, p. 327.

"(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.".

18 USC 3170.

(f) Section 3170(a) of that title is amended in the first sentence—

(1) by striking out "and" after "process" and inserting in lieu thereof a comma;

(2) by inserting a comma after "limits";

(3) by inserting "continuous and permanent compliance with the" immediately before "objectives"; and

(4) by striking out "required by" and inserting in lieu thereof "described in".

18 USC 3174.

SEC. 10. Section 3174 of that title is amended—

(1) by striking out the period after the first sentence in subsection (a) and inserting in lieu thereof the following: "as provided in subsection (b).";

Time limits, suspension.

(2) by striking the first two sentences of subsection (b) and inserting the following in lieu thereof: "If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period.";

(3) by striking out "arrangement" in the third sentence of subsection (b) and inserting in lieu thereof "indictment";

(4) by amending subsection (c) to read as follows:

Judicial council, implementation of provisions.

"(c)(1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

"(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.";

(5) by adding at the end the following:

Application approval.

"(d)(1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

Report to Congress and to Judicial Conference of United States.

"(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

"(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).''; and

(6) by amending the section heading to read as follows:

"§ 3174. Judicial emergency and implementation".

SEC. 11. (a) The item relating to section 3164 in the table of sections for chapter 208 of such title is amended to read as follows:

"3164. Persons detained or designated as being of high risk.".

(b) The item relating to section 3174 in the table of sections for chapter 208 of such title is amended to read as follows:

"3174. Judicial emergency and implementation.".

Approved August 2, 1979.

APPENDIX C — Speedy Trial Act Amendment of 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-390 (Comm. on the Judiciary).
SENATE REPORT No. 96-212 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 125 (1979):

June 19, considered and passed Senate.

July 31, considered and passed House, amended; Senate concurred in House amendments.

Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1762

In the Supreme Court of the United States

OCTOBER TERM, 1980

RONALD F. MANALE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

JUAN C. MARRERO
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the evidence presented at petitioner's trial was sufficient to support his conviction.

2. Whether the nine month delay between petitioner's arraignment and trial violated the Speedy Trial Act or denied him a speedy trial under the Sixth Amendment.

TABLE OF CONTENTS

Page

Opinion below 1

Jurisdiction 1

Statement 1

Argument 3

Conclusion 8

TABLE OF AUTHORITIES

Cases:

Barker v. *Wingo*, 407 U.S. 514 ..... 7, 8

United States v. *Barboza*, 612 F. 2d 999 6

United States v. *Carreon*, 626 F. 2d 528 6

United States v. *Coffman*, 638 F. 2d 192 6

United States v. *Dye*, 508 F. 2d 1226, cert. denied, 420 U.S. 974 5

United States v. *Fielding*, 630 F. 2d 1357 6

United States v. *Perez*, 489 F. 2d 51, cert. denied, 417 U.S. 945 5

United States v. *Vanella*, 619 F. 2d 384 6

Page

Constitution and statutes:

United States Constitution, Sixth Amendment 4

Speedy Trial Act, 18 U.S.C. (& Supp. III) 3161 *et seq.* 3

18 U.S.C. 3161(c) 7

18 U.S.C. 3161(g) 5, 7

18 U.S.C. 3161(h) 5

18 U.S.C. 3161(h)(7) 5

18 U.S.C. 3161(h)(8) 4

18 U.S.C. 3161(h)(8)(A) 4, 5

18 U.S.C. 3161(h)(8)(B) 5

18 U.S.C. 3161(h)(8)(B)(ii) 4

18 U.S.C. 3161(h)(8)(C) 4

18 U.S.C. 3162(a)(2) 5

18 U.S.C. 3163(b) 7

18 U.S.C. (Supp. III) 3163(c) 6

18 U.S.C. 3163(c)(3) 6

21 U.S.C. 841(a)(1) 2

21 U.S.C. 846 1

Miscellaneous:

H.R. Rep. No. 96-390, 96th Cong., 1st Sess. (1979) 6, 7

S. Rep. No. 96-212, 96th Cong., 1st Sess. (1979) 6, 7

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1762

RONALD F. MANALE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The court of appeals affirmed petitioner's conviction without opinion. The unpublished order of affirmance is reproduced at Pet. App. A1-A2.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 1981. A petition for rehearing was denied February 17, 1981. The petition for a writ of certiorari was filed on April 21, 1981.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner and six co-defendants were convicted of conspiracy to possess cocaine with intent to distribute, in violation of 21 U.S.C. 846, and

[1] It appears that the petition was filed out of time.

of committing the substantive offense, in violation of 21 U.S.C. 841(a)(1). Petitioner was sentenced to two years' imprisonment and a three-year special parole term. The court of appeals affirmed without opinion.

The evidence at trial showed that, on several occasions in October 1977, petitioner spoke by telephone with Christine Wedbush, who informed him that she had "lady" (cocaine) and would fly from Florida to join him in New York (8/2/79 Tr. 186).[2] On October 17, petitioner met Wedbush and her friend, Sherry Bailey, at the airport (*id.* at 188). En route to petitioner's apartment, Wedbush showed him the cocaine and stated that she was trying to sell it (*id.* at 190). Petitioner replied that he had not expected such a large amount and "wasn't sure he could get rid of it" (*ibid.*).

At the apartment, petitioner told Bailey that he wished to have the cocaine tested (8/2/79 Tr. 193-194). Petitioner also observed that "he hadn't been dealing in a long time and it would take awhile to get his connections back for that bunch of coke." After making a few telephone calls, petitioner took approximately half a gram of cocaine and, along with his roommate, left the apartment to have the substance tested (*ibid.*). When they returned, petitioner informed Wedbush and Bailey that the cocaine, not being of a high quality, would take a week to sell and that the price was "ridiculous" (*id.* at 196).

In petitioner's presence, Wedbush called a buyer (James DiStefano) in Detroit and told him that she had a "very heavy lady" for him. DiStefano agreed to meet her at the airport in Detroit to purchase the cocaine (8/2/79 Tr. 197). Wedbush then explained to petitioner that she would take the cocaine to DiStefano (8/7/79 Tr. 94-95). They agreed to continue discussing a possible cocaine transaction after she

---

[2] "Tr." refers to the transcript of petitioner's trial.

returned from Detroit (*id.* at 94). Petitioner then drove Wedbush and Bailey to the airport (8/2/79 Tr. 198).

ARGUMENT

This case presents no question warranting review by this Court. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioner asserts (Pet. 5-8) that the evidence was insufficient to support his conviction. The evidence in this case was clearly sufficient to support the jury's conclusion that petitioner had conspired to possess, and did possess, cocaine with the intent to distribute it.

Wedbush told petitioner on the telephone that she had "lady" (cocaine) to bring him, and petitioner called her to confirm their plans (8/2/79 Tr. 186). They met at petitioner's apartment, where petitioner made telephone calls to sell the cocaine (*id.* at 188-193). Petitioner then left the apartment with approximately one-half gram of cocaine and had the substance tested. Upon returning, he informed Wedbush that he could not distribute the cocaine because it was very expensive, not of high quality, and had to be sold too quickly. He agreed, however, to continue discussing a future transaction when she returned from Detroit. Finally, petitioner drove Wedbush to the airport, knowing that she travelled to effect a cocaine transaction with DiStefano. Accordingly, there was sufficient evidence from which a jury could conclude that petitioner conspired to possess, and had possessed, cocaine with the intent to distribute.

2. Petitioner contends (Pet. 9-14) that delay between his arraignment on October 16, 1978, and his trial which commenced July 23, 1979, violated the Speedy Trial Act, 18 U.S.C. (& Supp. III) 3161 *et seq.*, and also violated his

constitutional right to a speedy trial under the Sixth Amendment.[3] These claims were properly rejected by the courts below.

a. Petitioner's statutory claim rests upon his assertion (Pet. 11-14) that the district court's order of June 28, 1979, entered pursuant to 18 U.S.C. 3161(h)(8), excluding the period between February 20, 1979, and July 5, 1979, from speedy trial computations "was not made in good faith, nor in the spirit of Congress' intent in enacting the Law" (Pet. 13). The order was predicated on the finding that the complexity of the multi-defendant case was such that deferral of the trial to allow for full preparation served the ends of justice. Petitioner's claim is based on the unsupported speculation that the district court's motivation for authorizing this exclusion was general calendar congestion, an impermissible ground for exclusion, see 18 U.S.C. 3161(h)(8)(C), rather than the ground stated by the district court, which is a valid one under the Speedy Trial Act, 18 U.S.C. 3161(h)(8)(A), (B)(ii).[4] Petitioner's contention (Pet. 13) that

---

[3]Between his arraignment on October 16, 1978, and November 20, 1978, petitioner requested and received a number of continuances from the district court (Pet. 3). On December 22, 1978, he moved the court for a dismissal of the indictment, but the court denied this motion on January 31, 1979 (Pet. 3-4). Subsequently, the trial court granted the government's requests for continuances on several occasions and scheduled the trial for May 22, 1979 (Pet. 4). The court then rescheduled the trial to July 5 (Pet. 4), but petitioner requested a continuance until July 10 (Pet. 4). On July 9, 1979, petitioner moved for dismissal, alleging a violation of his rights under the Speedy Trial Act. The trial began on July 23, 1979 (*id.* at 4-5).

[4]Petitioner's contention (Pet. 9) that the district court's denial of his motion for severance subjected him to delays resulting from preparation by court and counsel for a complex multi-defendant trial belies his contention that the exclusion order did not rest on the grounds stated by the court.

Petitioner's contention that failure to grant a separate trial was error is itself unfounded. As petitioner acknowledges (Pet. 9), defendants jointly indicted should generally be tried together, particularly where

indictment upon a defendant's motion when the prescribed time limit has not been met. However, as enacted in 1975, this sanction was not to "become effective" until after July 1, 1979. 18 U.S.C. 3163(c)(3). Convinced that the federal courts were not uniformly prepared to implement the Act fully by that date, Congress further postponed the effective date of the sanctions in amendments to the Speedy Trial Act enacted August 2, 1979, providing that the dismissal sanction "shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed on or after July 1, 1980." 18 U.S.C. (Supp. III) 3163(c). See H.R. Rep. No. 96-390, 96th Cong., 1st Sess. 8-9, 12 (1979); S. Rep. No. 96-212, 96th Cong., 1st Sess. 30-31, 35 (1979).

Petitioner argues (Pet. 10) that because his trial began after July 1, 1979, and before August 2, 1979, the district court was obliged to grant his motion for dismissal of the indictment. See note 3, *supra*. Contrary to petitioner's assumption, this case does not present the question whether the 1979 Speedy Trial Act amendments were applicable "retroactively" to prevent giving effect to the dismissal sanctions in the interval between July 1, 1979, and August 2, 1979. Cf. *United States* v. *Fielding*, 630 F. 2d 1357 (9th Cir. 1980). Rather, as the court of appeals evidently concluded, the Speedy Trial Act, as initially enacted, provided that the dismissal sanction was effective only with respect to cases filed on or after July 1, 1979. See *United States* v. *Coffman*, 638 F. 2d 192, 193 (10th Cir. 1980); *United States* v. *Carreon*, 626 F. 2d 528, 532 n.5 (7th Cir. 1980); *United States* v. *Vanella*, 619 F. 2d 384, 386 (5th Cir. 1980), *United States* v. *Barboza*, 612 F. 2d 999, 1000 (5th Cir. 1980). As petitioner was arraigned on October 16, 1978, the dismissal

sanction of the Speedy Trial Act could in no event be applied in his case.[5]

Finally, even if the courts of appeals that have uniformly reached this conclusion are all in error, only a limited number of cases are affected, and the question is of no continuing importance.

b. Petitioner also contends (Pet. 14-16) that he was denied his Sixth Amendment right to a speedy trial. Under the test established in *Barker* v. *Wingo*, 407 U.S. 514 (1972), petitioner's claim is unsound. In *Barker*, the Court held that speedy trial claims must be determined on a case by case basis, considering the length of delay, the reason for the delay, whether the accused timely asserted his right to a speedy trial, and whether there was any prejudice from the delay. *Id.* at 530-533. Here, the length of the delay from arraignment to trial—approximately nine months—is hardly unconscionable, particularly in view of petitioner's own

---

[5]By the 1979 amendments Congress made explicit its intention that the dismissal sanction be applied only to cases filed on or after the effective date. 18 U.S.C. (Supp. III) 3163(c). The legislative history of the amendments reveals that Congress intended to work no change in this respect, but only to "specify" with greater precision its original intent. H.R. Rep. No. 96-390, *supra*, at 12; see also S. Rep. No. 96-212, *supra*, at 35. The legislative history of the 1979 amendments also reflects Congress' understanding that under the Act as it stood prior to amendment, the dismissal sanction applied only to cases subject to the "permanent" 60 day limit on time elapsed between arraignment and trial—*i.e.* those commenced after July 1, 1979—rather than any of the interim limits which took effect earlier, such as the 80-day period applicable to this case (see 18 U.S.C. 3161(c) and (g); 18 U.S.C. 3163(b)). H.R. Rep. No. 96-390, *supra*, at 3, 8).

Given Congress' understanding of the effective date of the sanctions under the Speedy Trial Act prior to the 1979 amendments, there was no reason for Congress to address itself to the illusory problem, posited by petitioner, of "retroactive" application of the deferral of sanctions. Adoption of petitioner's interpretation of the Speedy Trial Act and the 1979 amendments, on the other hand, would lead to the peculiar conclusion that the deferral of his trial was impermissible, but would have been proper if it had been extended until August 3, 1979.

motions for continuance, which resulted in more than three months of delay.[6] In addition, petitioner does not contend that the reason for the delay was a "deliberate attempt to delay the trial in order to hamper the defense [and therefore that] should be weighed heavily against the government." *Barker* v. *Wingo, supra*, 407 U.S. at 531. Instead, he speculates that "[t]he actual reasons for the adjournment were either because the Government wasn't prepared and/or other protracted proceedings pending before the Court" (Pet. 15). Finally, petitioner's contention (Pet. 16) that his defense was impaired because he was not able to find and present as a witness an unnamed "third party," has no support in the record and is entirely speculative. Moreover, by petitioner's own acount (Pet. 15-16), the "disappearance" of the third party appears to be rooted in petitioner's relocation from New York to Texas approximately a year before his indictment, rather than in the time elapsed between his arraignment and trial. Accordingly, petitioner has demonstrated no prejudice flowing from the relatively brief delay in commencement of his trial.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

JUAN C. MARRERO
Attorney

JUNE 1981

---

[6]See note 3, *supra*.

DOJ-1981-06

Office-Supreme Court, U.S.
FILED
JUL 10 1981
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1762

RONALD F. MANALE, *Petitioner,*

— *vs.* —

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

CARL F. GUY, ESQ.
850 Fay Road
Syracuse, New York 13219
(315) 488-2933
Counsel for Petitioner

FRANK ARMANI, ESQ.
4300 West Genesee Street
Syracuse, New York 13219
(315) 487-2551
Counsel of Record

TABLE OF CONTENTS

Page

Table of Authorities i

Reply Argument 1

Conclusion 4

APPENDIX:

A. Clerk's Grant of Extension of Time Within Which to File Opposing Brief A1

B. Letter of Service A2

Table of Authorities Cited:

Cases:

Barker v. *Wingo*, 407 U.S. 514 (1971) 4

Bruton v. *U.S.*, 391 U.S. 123 (1968) 3

Miscellaneous:

Rule 22, Rules of the Supreme Court of the United States 1, 2

In The

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1762

RONALD F. MANALE, *Petitioner*,

— *vs.* —

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

REPLY ARGUMENT

1. The Brief for the United States in opposition to Ronald Manale's petition for certiorari was filed five (5) days late and thus should not have been accepted. On May 20th, 1981, the Clerk of the Supreme Court of the United States granted the Government's request for an extension of time within which to file a response to the petition, to and including June 12, 1981. (Appendix A). The Government, contrary to the Clerk's extension, filed their Brief in Opposition on June 17, 1981. (Appendix B). Pursuant to Rule 22 of this Court; "[r]espondent shall have 30 days (unless enlarged . . . by the Clerk pursuant to Rule 29.4) after receipt of a petition, within which to file . . .

an opposing brief." (Rule 22, Rules of the Supreme Court of the United States). The rule also states that "the clerk shall not accept a brief which does not comply with this Rule" (Rule 22, Rules of the Supreme Court of the United States). The Clerk, therefore, filed the Government's brief in opposition contrary to the Rules of the Supreme Court, and said brief should not have been accepted.

2. Assuming, arguendo, the facts in respondent's brief in opposition (Brief 3) there is still no evidence of any agreement. The facts in respondent's brief at the most show that petitioner contemplated a purchase, but the fact remains that petitioner never did purchase any cocaine from Wedbush. The Government themselves concede that petitioner informed Wedbush that "he could not distribute the cocaine" (Brief 3).

The Government also contends that petitioner and Wedbush agreed to continue discussing a possible cocaine transaction after she (Wedbush) returned from Detroit (Brief 2-3). This is not so. Wedbush said they could discuss Pat Malek after she (Wedbush) returned from Detroit and petitioner said okay (8-7-79 T. p. 94-95).

A reading of the trial transcript supports petitioner's contention that the evidence was wholly insufficient to warrant his conviction. The Government's chief witness against petitioner was Christine Wedbush, an informant in the Witness Program who was paid $880.00 a month along with medical expenses while living at home with her mother. Wedbush's testimony instead of supporting petitioner's conviction, actually supports his innocence. Wedbush testified that petitioner did not know anything about her plans for Detroit, other than knowing that she was going there (8-6-79 T. p. 595, A-958). Petitioner had no knowledge of any deal with Wedbush, nor did he indicate at any time that he was going to join in any plan or organization for the marketing of cocaine. Mr. Manale, petitioner, did not wish to purchase the cocaine and wanted nothing to do with Wedbush's efforts to sell him the substance

(8-6-79 T. p. 552, 558, 582, A-915, 921, 945). Wedbush also testified that petitioner "did ask us to leave because he couldn't get rid of it for us" (8-6-79 T. p. 582, A-945). In fact, Wedbush stated at trial that she felt it was partly her fault that petitioner was involved (8-6-79 T. p. 582, A-945), and admitted that she had "no agreement" with him concerning anything with regard to cocaine (8-6-79 T. p. 599, A-962). The next day at trial, during the Government's re-direct examination of Wedbush, and after an extensive opportunity to refresh her memory, Wedbush testified that there was "no written agreement between her and Mr. Manale" (8-7-79 T. p. 94, A-1069), and failed to elaborate on that point.

The respondent also makes note of the fact that petitioner drove Wedbush to the airport (Brief 3) and implies an agreement to conspire with intent to distribute can be found out of that fact. This is certainly a tenuous position at best and such an inference is clearly beyond the standard of any rational trier of fact. I doubt that this Court wants to hold that absent any agreement between alleged conspirators, an agreement to conspire to distribute can be found where a person drives an old friend to the airport and that person has contraband in her possession. A holding such as the above would be too tenuous a standard and would lead to rampant mistrust and suspicion among family and friends.

3. Petitioner concedes that there is a presumption in favor of joint trials (Brief 5), but only when joinder can be achieved without substantial prejudice to the rights of a defendant to a fair trial (*Bruton* v. *U.S.*, 391 U.S. 123 (1968). In denying petitioner's motion for severance, the District Court was in effect stating that joinder would not prejudice his rights to a fair trial. A delay of 283 days certainly did prejudice petitioner's rights to a fair trial and moreover through joinder the jury was forced to hear evidence concerning the culpability of nine defendants. This led to the impossible task of the jury trying to distinguish petitioner's alleged culpability from that of his co-defendants. Thus, joinder did prejudice petitioner's rights to a fair trial.

4. The petitioner does not contend that the reason for the delay was a deliberate attempt to delay the trial in order to hamper the defense, but delay did in fact abridge petitioner's right to a Speedy trial and as the delay was not justifiable, it should be weighed against the Government since they have the ultimate responsibility for such circumstances. *Barker* v. *Wingo*, 407 U.S. 514 (1971).

CONCLUSION

This Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

CARL F. GUY, ESQ.
850 Fay Road
Syracuse, New York 13219
(315) 488-2933
Counsel for Petitioner

FRANK ARMANI, ESQ.
4300 West Genesee Street
Syracuse, New York 13219
(315) 487-2551
Counsel of Record

I certify that 3 copies of this Reply were served upon the following by placing the same in the United States mail on July 8, 1981, prior to filing in the Clerk's office of this Court.

Solicitor General
Room 5614 Department of Justice
Washington, D.C. 20530

CARL F. GUY, ESQ.
Counsel for Petitioner

FRANK ARMANI, ESQ.
Counsel of Record

APPENDIX A – Clerk's Grant of Extension of Time Within Which to File Opposing Brief.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 20, 1981

Honorable Wade H. McCree, Jr.
Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

Re: Ronald F. Manale v. United States
No. 80-1762

Dear Mr. McCree:

Your request of May 19, 1981 for an extension of time within which to file a response opposing the petition for a writ of certiorari in the above-entitled case has been granted, and your time has been extended to and including June 12, 1981.

Very truly yours,
ALEXANDER L. STEVAS, Clerk
By

Francis J. Lorson
Chief Deputy Clerk

sd

cc: Carl F. Guy, Esquire
Frank Armani, Esquire

APPENDIX B – Letter of Service.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 80

RONALD F. MANALE, PETITIONER)
)
vs.) No. 80-1762
)
UNITED STATES OF AMERICA)

Service of THREE copies of BRIEF FOR THE UNITED STATES IN OPPOSITION, is acknowledged this 23rd day of JUNE, 19 81.

s/ Frank Armani (illegible)
CARL F. GUY

FRANK ARMANI
s/ Carl F. Guy

AIR MAIL:JUNE 17, 1981
Note: Please date, sign and
return this acknowledgment to:
OFFICE OF THE SOLICITOR GENERAL
Department of Justice
Washington, D. C. 20530